In the High Court of Judicature at Madras

Dated:10.11.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM

Civil Revision Petition (PD) Nos.1018 & 1019 of 2004
and C.M.P.No.10361 of 2004
..

Radhakrishnan .. Petitioner in both the CRPs.,

vs.

1. Pattu Ammal
2. Mathialagan
3. Karunanidhi
4. Kumari
5. Nedunchezhian .. Respondents in both the CRPs.,

Revision Petitions filed under Article 227 of the Constitution of India against the orders dated 23.01.2004 made in I.A.Nos.449 and 695 of 2003 respectively in O.S.No.33 of 2001 on the file of Subordinate Judge, Chidambaram.

For petitioner : Mr. R.Subramanian

For respondents : Mr. N.Sankaravadivelu for R3 to R5
No appearance for R2
R1 - Exparte
..

COMMON ORDER

The plaintiff in O.S.No.33 of 2001 on the file of Subordinate Judge, Chidambaram is the petitioner in both the revision petitions. He filed two petitions; (i) I.A.No.449 of 2003 for amendment of the plaint; and (ii) I.A.No.695 of 2003 seeking permission to file reply statement. By order dated 23.01.2004, the learned Subordinate Judge, after finding that the amendment sought for, if allowed, would change the cause of action, dismissed I.A.No.449 of 2003. In view of the dismissal of the said application, the learned Sub Judge dismissed I.A.No.695 of 2003 also. Challenging both the orders, the plaintiff has filed the above revision petitions.

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2. Heard Mr. R. Subramanian, learned counsel for the petitioner and Mr. Sankaravadivelu, learned counsel for the contesting respondents 3 to 5.

3. The plaintiff/petitioner has filed the said suit for partition and possession of 2/6th share in the suit properties. According to him, his father Muthiah Padayachi married the first defendant/first respondent as his second wife and respondents 2 to 5 /defendants 2 to 5 are the children born to them. According to him, by mistake, it is stated in the original plaint that his father Muthiah Padayachi married the first defendant in the year 1946, but actually, the marriage took place only in the year 1956 and the said mistake was found out subsequently. Therefore, he filed I.A.No.449 of 2003 for amendment of the plaint correcting the typographical mistake and consequently, for amendment of other reliefs. The learned Subordinate Judge, after finding that the plaintiff seeks correction/amendment in 13 places and if the same is allowed, it would change the cause of action as well as share of the plaintiff as well as the defendants in the suit properties, dismissed the said application.

4. I verified the averments made in the original plaint and as well as the amendments sought for. It is true that in the plaint, in more than one place, it is stated that plaintiff's father Muthiah Padayachi married the first defendant in the year 1946, whereas, according to the plaintiff, the marriage actually took place in the year 1956. First of all, the learned Subordinate Judge failed to note that the plaintiff filed the application for amendment before the commencement of trial of the suit. It is settled that pre-trial amendment has to be allowed liberally in order to avoid multiplicity of proceedings, especially when it does not alter the basic structure of the suit, but only the nature of relief is changed correcting the factual mistakes. In the present case, it is specifically stated by the petitioner that he seeks only to correct the year of marriage of the first defendant with Muthiah Padayachi as 1956 instead of 1946. No doubt, he has also pleaded consequential amendment of other reliefs.

5. It is not in dispute that the suit was filed in the year 2001. In Rethinam @ Anna Samuthiram Ammal ..vs.. Syed Abdul Rahim (2005 (3) CTC 321), the learned single Judge of this Court has held that Amended Act, 99 of 2002 came into force on 1.7.2002 and any pleadings filed before 1.7.2002, would not be governed by amended Act and amendment of pleading is to be decided as per law as it stood prior to 1.7.2002.

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6. In T.Gunaseelan ..vs.. M.Thamilselvi (2004 (5) CTC 729), I had an occasion to consider pre-trial amendment, wherein following the dictum laid down by the Supreme Court in Sampathkumar vs. Ayyakkannu (2002 (4) CTC 189), after holding that pre-trial amendments are to be allowed liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof and that pre-trail amendments would curtail multiplicity of legal proceedings, set aside the order refusing amendment, and allowed the revision. The said decision is directly applicable to the case on hand.

7. Even after amendment of Code of Civil Procedure, as held by the Apex Court in Second Salem Bar Association vs. Union of India (2005 (6) SCC 344), if the amendment sought for is not going to change the entire cause of action and if there is no illegality therein and such petition is filed not to delay the trial, generally the amendment sought for has to be considered.

8. In the case on hand, as stated earlier, the trial is yet to commence. I am satisfied that by allowing the amendment prayed for, no new case is sought to be introduced. Regarding the share of the plaintiff as well as the defendants, it depends upon their entitlement and according to the law in force. Unfortunately, the learned Subordinate Judge committed an error in not adverting to these relevant aspects. As rightly pointed out by the learned counsel for the petitioner, when the year of marriage of the first defendant is corrected, necessarily it follows consequential amendment, which in no way will introduce a new cause of action.

Accordingly, the orders passed in I.A.No.449 of 2003 and the consequential order in I.A.No.695 of 2003 are set aside and both the revision petitions are allowed. No costs.

Inasmuch as the suit is of the year 1999, the learned Subordinate Judge, Chidambaram is directed to dispose of the suit (O.S.No.33 of 2001) within a period of six months from the date of receipt of copy of this order. Both parties are directed to co-operate for early disposal, as directed above.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

The Subordinate Judge,
Chidambaram.

1 cc to Mr.N.Sankaravadivel, Advocate, SR.54335

bs (co)

dv/18.12.06

Order
in C.R.P.(PD).Nos.
1018and 1019 of 2004

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